

Senate Committee on Environment and Public Works
Hearing Entitled, “Hearing on the Nominations of Amanda Howe to be Assistant Administrator for Mission Support of the Environmental Protection Agency, David Uhlmann to be Assistant Administrator for Enforcement and Compliance Assurance of the Environmental Protection Agency, and Carlton Waterhouse to be Assistant Administrator of Land and Emergency Management of the Environmental Protection Agency.”
September 15, 2021

Questions for the Record for David Uhlmann

Senator Boozman:

1. On August 30, 2021, EPA issued a final rule revoking all chlorpyrifos food tolerances. Why is EPA revoking tolerances in advance of issuing a registration cancellation order?
 - a. Is there more recent guidance from OMB or the White House that speaks to E.O. 12866 requirements applying to tolerances than the OMB memo from Director Panetta in 1993?
 - b. If not, why is EPA implementing this final rule outside of the 12866 process without providing other agencies and the public with the opportunity to comment on the significant economic and policy impacts of this decision?

Response: I understand that the EPA’s Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA’s Office of Enforcement and Compliance Assurance.

2. EPA’s public statements have cast doubt on the safety of commodities and crops that may contain tolerance residues consistent with legally applied chlorpyrifos. How are those statements consistent with the rule’s references to FFDCA Sec. 408(l)(5) regarding the channels of trade for treated commodities?

Response: I understand that the EPA’s Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA’s Office of Enforcement and Compliance Assurance.

3. EPA’s stated policies regarding evaluating food tolerances on imported food clearly exclude sources of possible exposure from drinking water since such imported crops are not, by definition, grown in the U.S. What is the scientific justification, based on EPA’s scientific risk assessment, for cancelling import tolerances?
 - a. Are these cancellations, based on new science, consistent with the World Trade Organization’s Sanitary and Phytosanitary protocols and obligations and U.S. trade agreements?

- b. Was the U.S. Trade Representative (USTR) consulted during EPA's rulemaking deliberations?
- c. If so, did USTR raise concerns with the impacts the decision may have on USMCA or other trading agreements?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

- 4. Can chlorpyrifos still be used on corn and other crops if they are exported and not used for domestic food or feed consumption?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

- 5. How will EPA enforce and implement the revocation of tolerances after February 28, 2022?

Response: I share Administrator Regan's commitment to following the law and acting transparently. If confirmed, I look forward to being briefed on this issue and will ensure that you and your staff are briefed on this issue.

- 6. EPA's own risk assessment and conclusions in the 2020 Proposed Interim Decision (PID) identified eleven crops using chlorpyrifos products across thirty-nine states which meet the relevant safety standard. These are the same documents EPA cites in its revocation notice, yet all uses and tolerances will be revoked. Why did EPA not allow uses meeting the safety standard to continue?
 - a. Did EPA conduct new assessments or otherwise change its assessment from the information in the 2020 chlorpyrifos PID?
 - b. If changed, were any changes subject to public disclosure before EPA's revocation announcement?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

7. EPA has continued to say publicly that some uses of chlorpyrifos will be retained beyond the agency's recent decision. What uses will be retained, and how will EPA classify these applications?
 - a. How will EPA classify applications on tree fruit where the fruit is not directly treated but the trunks of the trees may be treated?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

8. How will EPA address the current crop of non-confection sunflowers (i.e. oil production) that have already been treated, or may be treated, with chlorpyrifos before February 28, 2022 but may not enter channels of trade until after February 28, 2022?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

9. Has EPA developed final commodity-specific guidance for growers and applicators whose crop systems may be impacted by the tolerance revocation? If not, when will EPA finalize this guidance?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

10. Will EPA develop, provide, or implement relief for growers who may be negatively impacted by the implementation timeline?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

11. How will EPA treat unique uses where those uses are not likely to yield residues in food or feed crops?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure

you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

12. How will EPA classify uses on commodities, such as sugarbeets, that are completely processed before entering commerce but may not enter channels of trade until after February 28, 2022?
- a. How will EPA classify uses on commodities or products that are semi-processed, such as sugarbeet thick juice, after February 28, 2022?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

13. How will EPA's tolerance revocation decision impact crops harvested before February 28, 2022 but may not enter the food system or channels of trade until after February 28, 2022?
- a. If EPA (or FDA) finds chlorpyrifos residues on commodities or food products after February 28, 2022, how will EPA (or FDA) determine if those residues resulted from legal applications before February 28, 2022 or non-compliant applications after February 28, 2022?
- b. How will evidence of legal pesticide applications be established throughout the commodity supply chain?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

14. Please describe what efforts EPA has taken and/or is taking with FDA to mitigate the impact on channels of trade after February 28, 2022.

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15. When will EPA provide a response to sugarbeet stakeholders on what information is needed, and how to submit said information, in order for EPA to analyze historic non-residue data on sugarbeets in order to make an informed decision on whether or not sugarbeets historically have been misclassified as food-uses?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

16. EPA has been classifying some commodities as food uses even though those uses will not likely yield residues in food or feed crops. Will EPA allow for a process for commodities to be reclassified as non-food use when no residue exists?

a. If not, why not?

b. If yes, when will EPA provide final Agency guidance on those commodities?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

17. How will EPA classify chlorpyrifos uses applied on corn, soybeans, and sorghum if those commodities are only used in ethanol or biodiesel production?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

18. How will EPA address future FIFRA Section 18 Emergency Exemption Requests for chlorpyrifos?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

19. How does EPA plan to address the safe, orderly, and lawful disposal of significant volumes of existing stocks in the hands of distributors and growers?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

20. Will EPA allow the use of existing stocks beyond February 28, 2022?

- a. If not, will EPA consider an extension of the effective date of the Final Rule revoking tolerances so existing inventories can be formulated, sold/distributed and used?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

21. EPA noted objections and hearing requests in response to the Agency's final revocation rule are due to the EPA Hearing Clerk by October 29, 2021. If any objections or hearing requests are filed prior to October 29, 2021, will EPA provide a final response to those objections prior to the tolerance revocations becoming effective on February 28, 2022?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

22. What is EPA's preferred process for manufacturers, distributors, and/or growers to make the request to extend the effective date of the Final Rule revoking tolerances?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

23. Does EPA have a list of alternative pesticide products available for crops and commodities impacted by the tolerance revocation?

- a. If yes, what is the cost per acre differential for affected crops where these alternative pesticide products will be available?
- b. What is the supply availability of these alternative pesticide products?
- c. What is the current estimated timeline for EPA approving additional alternative pesticide products that are equally efficacious as chlorpyrifos?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

24. Was the U.S. Department of Agriculture (USDA) consulted for information about alternative pest control products and any cost and yield loss comparisons?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

25. EPA's public statements may cast doubt on the legality of safe, wholesome food, confusing consumers and potentially leading to extensive food waste, needlessly destroyed products and economic burdens across the supply chain. What actions is EPA taking to clarify the continued safety of food that may contain residues of legally applied chlorpyrifos?
- a. What outreach, education, and/or public statements will EPA make and/or undertake to help ensure confidence with the safety of foods in the marketplace and in the channels of trade?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

26. EPA's FAQ mentions the Agency will issue a Notice of Intent to Cancel (NOIC) chlorpyrifos food use registrations under FIFRA. Will EPA allow stocks that contain non-food uses, in addition to food uses, to continue to be sold and used for non-food uses without any time limitations?
- a. Will EPA require revised labeling for those stocks?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.

27. If confirmed, will you commit that EPA's registration review for remaining uses will be conducted according to EPA's own scientific, risk-benefit standards and compliant with the requirements under FIFRA and FFDCA?

Response: I understand that the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has the lead role at the EPA for regulating chlorpyrifos. If confirmed, I look forward to working with my colleagues in OCSPP both to ensure you and your staff are briefed on this issue and to fulfill the duties assigned to me in the EPA's Office of Enforcement and Compliance Assurance.